

Federal Acquisition Regulation

16.402-2

(v) Prohibit earning any award fee when a contractor's overall cost, schedule, and technical performance is below satisfactory;

(vi) Provide for evaluation period(s) to be conducted at stated intervals during the contract period of performance so that the contractor will periodically be informed of the quality of its performance and the areas in which improvement is expected (*e.g.* six months, nine months, twelve months, or at specific milestones); and

(vii) Define the total award-fee pool amount and how this amount is allocated across each evaluation period.

(4) *Rollover of unearned award fee.* The use of rollover of unearned award fee is prohibited.

(5) *Limitations.* No award-fee contract shall be awarded unless—

(i) All of the limitations in 16.301-3, that are applicable to cost-reimbursement contracts only, are complied with;

(ii) An award-fee plan is completed in accordance with the requirements in 16.401(e)(3); and

(iii) A determination and finding is completed in accordance with 16.401(d) addressing all of the suitability items in 16.401(e)(1).

(f) *Incentive- and Award-Fee Data Collection and Analysis.* Each agency shall collect relevant data on award fee and incentive fees paid to contractors and include performance measures to evaluate such data on a regular basis to determine effectiveness of award and incentive fees as a tool for improving contractor performance and achieving desired program outcomes. This information should be considered as part of the acquisition planning process (see 7.105) in determining the appropriate type of contract to be utilized for future acquisitions.

(g) *Incentive- and Award-Fee Best Practices.* Each agency head shall provide mechanisms for sharing proven incentive strategies for the acquisition of different types of products and services among contracting and program management officials.

[48 FR 42219, Sept. 19, 1983, as amended at 62 FR 12695, Mar. 17, 1997; 74 FR 52858, Oct. 14, 2009]

EFFECTIVE DATE NOTE: At 75 FR 60263, Sept. 29, 2010, § 16.401 was amended by remov-

ing from paragraph (e)(2) the words “performance is” and adding “performance in the aggregate is” in its place each time it appears (twice).

Removing from Table 16-1 that follows paragraph (e)(3)(iv) the words “contract as” and adding “contract in the aggregate as” in its place each time it appears (five times); and

Removing from paragraph (e)(3)(v) the words “performance is” and adding “performance in the aggregate is” in its place.

16.402 Application of predetermined, formula-type incentives.

16.402-1 Cost incentives.

(a) Most incentive contracts include only cost incentives, which take the form of a profit or fee adjustment formula and are intended to motivate the contractor to effectively manage costs. No incentive contract may provide for other incentives without also providing a cost incentive (or constraint).

(b) Except for award-fee contracts (see 16.404 and 16.401 (e)), incentive contracts include a target cost, a target profit or fee, and a profit or fee adjustment formula that (within the constraints of a price ceiling or minimum and maximum fee) provides that—

(1) Actual cost that meets the target will result in the target profit or fee;

(2) Actual cost that exceeds the target will result in downward adjustment of target profit or fee; and

(3) Actual cost that is below the target will result in upward adjustment of target profit or fee.

[48 FR 42219, Sept. 19, 1983, as amended at 62 FR 12696, Mar. 17, 1997; 62 FR 51379, Oct. 1, 1997; 74 FR 52859, Oct. 14, 2009]

16.402-2 Performance incentives.

(a) Performance incentives may be considered in connection with specific product characteristics (*e.g.*, a missile range, an aircraft speed, an engine thrust, or a vehicle maneuverability) or other specific elements of the contractor's performance. These incentives should be designed to relate profit or fee to results achieved by the contractor, compared with specified targets.

(b) To the maximum extent practicable, positive and negative performance incentives shall be considered in connection with service contracts for performance of objectively measurable